BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:	)	
	)	CG Docket No. 02-278
Rules and Regulations Implementing the	)	DA 05-1346
Telephone Consumer Protection Act of 1991	)	

COMMENTS OF COALITION OF NON-PROFIT ORGANIZATIONS

I. INTRODUCTION

These public comments are being offered by a broad range of non-profit organizations, which have come together to form an ad hoc coalition for the exclusive purpose of providing comments in support of the petition for declaratory ruling relating to the Commission's jurisdiction over interstate telemarketing in the above-captioned matter.

This coalition (hereinafter referred to as "Charities") consists of a wide range of nonprofit organizations providing services to those who are disadvantaged and to better society in general.

These Charities depend primarily on public support and in many cases provide services which government does not or cannot provide. Surveys have shown that the general public believes nonprofits can deliver certain social services more effectively and more efficiently than government.[1] The support of charities by individual donors is the fairest way to fund these services because it is voluntary.

All the nonprofits listed on these comments rely upon telefunding agencies to deliver their messages and seek public support. Most, if not all, rely upon small gifts from many supporters. The telefunding agencies that provide these services are heavily regulated.[2] State laws commonly require registration, posting a bond, mandated point-of-solicitation disclosures, mandated contract and custody requirements and reporting. Because the nonprofits are "risk averse" they seek out and utilize only those telefunding agencies that act in compliance with all applicable laws and comply with the ethical standards required by the nonprofit.

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[1] "Public Confidence in nonprofit groups is on the rise in America." Chronicle of Philanthropy, February 17, 2005

[2] *See for example* 10 Penn. Statutes § 162.9 et seq.; S.C. Code Ann §§ 33-56-70 et seq.; Section 2.9 V.S.A. § 2472, et seq.; and Va. Code Ann § 57-54 et seq.

The Charities in this coalition are acting in a representative capacity for nonprofits that use professional representatives to make their appeal, whether it is local, statewide, regional, or national.

Very few national non-profit organizations have determined that it is in their best interest to conduct telemarketing appeals using their own employees. Those who have tried have often found it to be prohibitively expensive to acquire the necessary technology, training and expertise to successfully conduct appeals for support. These Charities believe their time and resources are far better spent providing services than learning how to manage a telemarketing center.

These Charities, like all others, are subject to numerous layers of regulation. Organization and function are regulated by state laws and the Internal Revenue Code, and fundraising activities are intensely regulated at the federal and state levels.

These Charities believe that the best and most economical way to deliver services to their constituencies is to have their agents conduct the appeals acting in compliance with a uniform set of regulations that applies to all telefunding efforts across the interstate boundaries in a consistent manner. Costs that are borne solely by telefunders, because of the lack of uniformity, are needless and ultimately fall on non-profit organizations, thereby reducing the amount of money available for program service.

These Charities recognize the value of meaningful regulation that protects the nation's consumers, but respectfully submit that these protections would be more readily understood and more widely complied with if they were uniform in application to interstate calls.

II. COMMENTS

The current circumstances are unique and provide to the Federal Communications Commission an opportunity to ultimately and finally reassert the position that there must be uniformity in the administration of standards and regulations governing interstate commerce telefunding activities. Uniform regulation would best serve the industry and the public. These Charities, and others similarly situated, believe that the framework of regulation set forth in the Federal Trade Commission's Telemarketing Sales Rule (TSR), and the Federal Communications Commission's Telephone Consumer Protection Act of 1991 (TCPA), establish a comprehensive and near uniform approach to regulation of the telefunding industry, which should be extended on an even basis to cover all similar activity conducted in interstate commerce.

Variation and deviation from these regulations on a state-by-state basis serves no meaningful purpose other than to create consumer confusion and compliance issues that will impede nonprofits' ability to be in contact with past and future supporters and inevitably will raise the cost of each such contact, thereby reducing the monies remaining for program service.

III. JURISDICTION

The FCC should use its exclusive jurisdiction over the telefunding calls made in interstate commerce to enforce uniformity over states' "do-not-call" laws, curfew laws, and existing business relationship laws, all as set forth in DA 05-1346.

A. State Do-Not-Call Laws.

The limitations imposed by the states' "do-not-call" laws on interstate telefunding appeals are inconsistent and illogical. Effective lobbying by some groups has resulted in laws which often exempt some groups and apply to others with no relation to perceived consumer harm. Calls by those least favored or politically impotent are subject to restriction, while those favored face little or no restriction.

While the FCC has acknowledged that calls made by and on behalf of nonprofits are not the kind of calls people seek to avoid, the states in some instances treat the calls made on behalf of nonprofits the same as calls selling unwanted goods or services. In some instances the treatment is worse. Some state statutes allow certain commercial calls but bar some charities' calls to their previous donors.

The problem with the approach by some states is their failure to recognize that different forms of speech are entitled to differing levels of protection under the First Amendment. Commercial speech is a form of protected speech and the limitations placed upon it must beat the test enunciated in *Central Hudson*.[3] The appeal by or on behalf of a nonprofit, even if the appeal is conducted through the medium of a telefunding agency, has been determined by the courts to be fully protected speech.[4] In *Riley*, the Court stressed that a far more intense level of scrutiny must be applied to any regulation which attempts to restrict otherwise fully protected speech. Indeed, as early as 1931 in *Near v. Minnesota*,[5], the Court held that prior restraints of speech as abhorrent to the Constitution and cannot stand except in rare circumstances.

The laws of the various states pertinent to telefunding activities, as will be illustrated herein, also occasionally unconstitutionally favor commercial speech over free speech. In *Metro Media, Inc. v. City of San Diego*,[6] the Court held that such a preference makes any such regulation unconstitutional.

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[3] *Central Hudson Gas and Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980).

[4] *See Riley v. National Federation of the Blind of North Carolina, Inc.,* 487 U.S. 781 (1988).

[5] 283 U.S. 697, 716.

[6] 453 U.S. 490, 513 (1980)

Another critical aspect in *Riley* is the distinction made in some of the states' laws, as illustrated hereinafter, which allow interstate calls to be made without restrictions if made by volunteers and/or employees of charitable organizations, but prohibit the same call if made by a compensated outside telefunding agency even if the content of the call is identical. This clearly conflicts with the dictates of the United States Supreme Court in *Riley*, *supra*, which held that such restrictions are a form of prior restraint. Calls made by outside agents on behalf of nonprofits are entitled to the same protection as calls made by nonprofit volunteers or employees.

1. North Dakota.

In North Dakota, the term "telephone solicitation" is defined in N.D.C. § 51-26-09(1) and includes any call for the purpose of, ". . .encouraging charitable contributions, or the purchase or rental of, or investment in, property, goods, services, or merchandise. . . ." The exceptions to the definition include calls by or on behalf of a nonprofit organization enjoying tax-exempt status under § 501 of the Internal Revenue Code, ". . .but only if the following applies: (1) telephone calls made by a volunteer or employee of the charitable organization. . . ." Thus, the law prohibits a charity, based upon the content of the call and the status of the caller, from calling any individual on the state's "do-not-call" list including its own donors. There is no exception for prior supporters who might favor such contacts.. At the same time, the law makes exceptions for calls made on behalf of those conducting polls, or those selling goods or services who do not intend to complete the transaction until a later face-to-face meeting. There is also an exception for calls made by or on behalf of a political party candidate or group. Most interestingly, the North Dakota law provides an exception under an existing business relationship for those who receive a free trial newspaper subscriptions.

This law was the subject of litigation brought by nonprofit organizations and the law was held to be unconstitutional as applied to solicitations on behalf of nonprofit organizations.[7] That nonprofit organizations had to bring this claim and sought no more than to make the application of the telemarketing restrictions consistent with the federal requirements evidences the importance of this issue.

2. Indiana.

The law in this state is even more onerous. I.C. 24-4.7 again narrows the exemption for calls made on behalf of nonprofit organizations to only those made by a volunteer or employee of the organization. At the same time, there are other exemptions to the restrictions, such as in North Dakota, e.g. an exemption for those who make a sale over the telephone that is not consummated until a later face-to-face meeting. There is also an exception for a telephone call soliciting the sale of a newspaper of general circulation if made by an employee of the newspaper. What makes this law particularly difficult for nonprofit organizations is the fact that charities calling in interstate

[7] *See Fraternal Order of Police, North Dakota Lodge v. Stenehjem*, 287 F. Supp. 2d 1023 (D. N.D., Southeast Div. 2003), which is currently on appeal in United States Court of Appeals for the Eighth Circuit.

commerce cannot even contact their own previous donors who may be on the state's do-not-call list if they employ a telefunding agency to make the call on their behalf.

This law has also been challenged by nonprofit organizations in federal court, yet oral arguments have not been scheduled.[8]

3. Nevada

The definition of a telephone solicitation in Nevada and those which are exempt in the state "do-not-call" law are the same as those found in North Dakota and Indiana. The exemption for nonprofit calling applies only if a call is made by an employee of the organization or a volunteer.[9] Like Indiana, there is no provision to allow charities compensating outside representatives to call even their own donors if they are on the state's "do-not-call" list.

4. Oklahoma

There has perhaps never been a law written in a more discriminatory manner to impede interstate telefunding activities than one recently passed in this state. Senate Bill 929 was signed into law by the Governor of Oklahoma and provides that:

> Any fraternal or membership organization not based in Oklahoma which solicits contributions from any person of this state by telephone, or contracts with professional fund-raisers to solicit such contributions, shall be required to have at least one member or employee of the fraternal or membership organization residing within the county where the call is received. (emphasis added.)

Fraternal organizations cover a wide range of potential composition, and may include college fraternities, as well as organizations such as a fraternal order of police. Many nonprofit organizations are membership organizations. Those who fall within these definitions which use an outside telefunding agency must now take the risk of prosecution or go to the expense of determining in which county in the state of Oklahoma they may have members or employees. The law creates a complete restraint against nonprofits seeking new members in counties not previously served.

5. Other States

Other states which impose virtually the same kind of limitation on calls made on behalf of nonprofit organizations simply seeking a donation, using a telefunder in lieu of an employee, include Arkansas,

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[8] *See National Coalition of Prayer v. Steve Carter*, I.P. 02-0536, C-B/S (S.D. Ind., filed April 10, 2002), which has not yet been presented to the court.

[9] *See* N.R.S. § 228.530(f).

Louisiana, Montana, Oregon, and Tennessee.[10] As an alternative to soliciting outright contributions, many nonprofits offer tickets to entertainment events, concerts, and banquets. Here too, a number of the states' laws treat such conduct differently from the national "do-not-call" registry restrictions if the call is made by a compensated telefunder. Those states include: Arkansas, California, Indiana, Massachusetts, Mississippi, Missouri, Montana, North Dakota, and Tennessee.

6. Use of National List

Under the federal rules, and more importantly, under the "rules of common sense," calls made by or on behalf of nonprofit organizations are allowed to call the individuals listed on the national "do-not-call" registry, but these organizations must honor individual "do-not-call" requests. Reality supports the notion that it is unproductive to call those who have asked not to be called in the future. Thus, it makes practical, as well as economical, sense to honor all such requests.

Individuals who sign up on national "do-not-call" registry do so knowing that calls made on behalf of nonprofits are not prohibited. Some citizens no doubt sign onto the list with the comfort that their favorite nonprofit organization will still be able to call them and provide them with information. A number of states have chosen not to create their own separate list. In lieu thereof, they have determined it is more economically desirable to simply take the national list and cull out the names of the residents of their own states as their list. This would be acceptable, except in those circumstances where the states' laws vary from the federal requirements. For example, under the federal standards calls made on behalf of a nonprofit to simply sell tickets in the name of the nonprofit would be subject to a lower standard of accepting individual "do-not-call" requests. In the states of Arkansas, Montana, and Oregon[11], their do-not-call laws would prohibit a call to someone on the federal "do-not-call" registry if made by a telefunding agency who acting as an agent for a nonprofit symphony trying to sell tickets for a performance. Hence, the immediate conflict between the federal standard and states' standards. Under the federal rules, calls to persons on the national "do-not-call" registry by a telefunding company selling a ticket to banquet for a charity are permissible. Whereas, in Arkansas, Montana and Oregon such activity is subject to penalty.

B. Existing Business Relationships.

Some states define "established business relationship" in a way which is at variance with the definition section set forth in both the FCC's and FTC's standards pursuant to 47 C.F.R. § 64.1200(f)(3) and 16 C.F.R. § 310.2(n). As noted, the state of Indiana, under I.C. § 24-4.7-1-1, provides no prior existing relationship exemption, while the state of Alaska defines an "existing

[10]*See* Ark. Code § 4-99-406; Calif. Bus. & Prof. Code § 17592; Ind. Code § 24-4.7-1; Mass. Gen. Laws ch. 159C; Miss. Code § 77-3-711(f); Mo. Code § 407.1095; Mont. Code § 30-14-1601(4); N.D. Code § 51-28-01(7); Tenn. Code § 65-4-401.

[11]*See for example*, Oregon Stat. § 646.567.

business relationship" as being one which has occurred in the past twenty-four months,[12] whereby in Louisiana it is only six months.[13] Then again, as aforenoted, the state of North Dakota also prohibits telefunders from calling past supporters, regardless of the frequency in which donations have been made.

C. Calling Time Restrictions.

There are a number of states which have calling time restrictions that are inconsistent with the federal standard, *e.g.,* Alabama, Kentucky, Louisiana, Massachusetts, Rhode Island, and Wyoming.[14] For the purposes of discussion, the Commission's attention is directed to Mississippi Statute § 77-3-603(a), which provides for a more restricted calling period of 8:00 a.m. to 8:00 p.m. Monday-Saturday, with calls being prohibited entirely on Sunday. The Mississippi law effectively eliminates one day out of seven in which charities can contact their donors. Sundays are traditionally a day of moral reflection – a time period consistent with discussion of moral and social issues represented by charitable organizations.

IV. PREVIOUS PRONOUNCEMENTS.

The issue of uniformity of regulation over interstate calling is a subject in which previous pronouncements have addressed. Without any attempt to be exhaustive, some of the highlights include the following.

The Communications Act of 1934, at § 2(a) gave the FCC exclusive jurisdiction over all *interstate* and *foreign* telecommunications, while reserving to the states jurisdiction with respect to *intrastate* telecommunications. (47 U.S.C. § 152(a) and (b))

When the Telephone Consumer Protection Act (TCPA) was passed in 1991, Congress amended § 2(b) of the Communications Act to give the FCC concurrent jurisdiction with the states over *intrastate* telemarketing calls, while maintaining its exclusive jurisdiction over *interstate* telemarketing activity.

On January 26, 1998, Geraldine A. Matise, Chief, Network Service Division, Common Carrier Bureau of the Federal Communications Commission wrote Delegate Ronald A. Guns. In the letter, the FCC's representative stated:

> In light of the provision s described above, Maryland can regulate and

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[12] *See* Alaska Code § 45.50. 475(g)(3)(B)(v).

[13] *See* La. Rev. Stat. § 45:844.23(4)(c).

[14] Alab. Pub. Serv. Comm'n Rule T-17(B)(2); Ky. Code § 367.46955(16); La. Rev. Stat. § 45:811(2); R.I. Gen. Laws §§ 5-61-2, 5-61-3.6; Wyo. Stat. § 40-12-302(d).

> restrict intrastate commercial telemarketing calls. The Communications Act, however, precludes Maryland from regulation or restricting interstate commercial telemarketing calls. Therefore, Maryland cannot apply its statutes to calls that are received in Maryland and originate in another state or calls originated in Maryland and received in another state. (Copy is attached with this submission.)

The argument for the benefit of uniformity was written by the FCC on Friday, July 25, 2003, when the Commission published its Rules and Regulations implementing the Telephone Consumer Protection Act of 1991; Final Rule found in the Federal Register, 68 Fed. Reg. at 644155 § 62, wherein the Commission states:

> We therefore believe that any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted. We will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek declaratory ruling from the Commission. We reiterate the interest in uniformity - as recognized by Congress - and encourage states to avoid subjecting telemarketers to inconsistent rules. (emphasis added)

Further, it seems evident that Congress also envisioned a uniform approach to the regulation of interstate telemarketing. See the comments of Senator Hollings concerning:

> Section 227(e)(1) clarifies the bill is not intended to preempt State authority regarding intrastate communications except with respect to the technical standard under § 227(d) and subject to § 227(e)(2). Pursuant to the general preemptive effect of the Communications Act of 1934, State regulation of interstate communications, including interstate communications initiated for telemarketing purposes, is preempted. (emphasis added.)

Perhaps the most recent pronouncement of the intention of the Commission was evidenced in a ruling issued on November 9, 2004, wherein by Memorandum Opinion and Order (FCC 04-267), the Commission declared that a type of Internet telephony service is not subject o traditional state public-utility regulation. The decision of the Commission to preempt state regulation of Internet telephone service is clearly applicable to preempting state "do-not-call" laws and similar restrictions pursuant to the federal scheme of regulation. In the separate statement of Chairman Michael K. Powell, he noted, "We have also worked closely with the states to strike a balance in the area of do-not-call enforcement." Commissioner Kathleen Q. Abernathy was even more emphatic when she

stated, in part, in her remarks:

> Allowing the Minnesota utility regulations - or comparable state regualtions - to stand would authorize a single state to establish default national rules for all VoIP providers, given the impossibility of isolating any intrastate-only component. Equally troubling is the prospect of subejcting providers of these innovative new services. . . . to a patchwork of *inconsistent* state regulations. . . and would deprive consumers of the cost of savings and exciting features they can deliver.

V. CONCLUSION

The uniform regulation of interstate telefunding calls made by charitable organizations is in the best interest of society as well as the charities who serve it. Charities and those who work with them should not have to go to the expense and indeed the risk of being in full compliance with a patchwork of regulations that is inconsistent and marked with examples of illogical and/or unconstitutional distinctions.

Uniformity of regulation would not impede any state's ability to institute actions in either federal court or in state court based upon alleged violations of the TCPA are consumer protection laws that exist in each jurisdiction.

Simply stated, the value of uniformity far outweighs the complexity of the current system.

Respectfully submitted,

Errol Copilevitz, Esq.
Acting Attorney for:

California Police Youth Charities
Cancer Center for Detection and Prevention
Cancer Fund of America
Catholic Medical Mission Board
Childhood Leukemia Foundation
Children's Cancer Fund of America
Committee for Missing Children
Concerned Women of America
Firefighters Charitable Foundation
Food for the Hungry
Hawaii Right to Life

Human Life of Washington
International Law Enforcement Games
Jewish Voice Ministries International
Kansas State Troopers Association
Kids Wish Network
Life Issues Institute
Long Island Coalition for Life
March of Dimes
Medical Support of America
Minnesota Citizens Concerned for Life
Miracle Flights for Kids
Mothers Against Drunk Driving
Multiple Sclerosis Association of America
Muscular Dystrophy Family Foundation
National Association of Police Athletic/Activities Leagues, Inc.
National Caregiving Foundation
National Cancer Coalition
National Federation of the Blind
National Right to Life Committee
Paralyzed Veterans of America
Professional Fire Fighters and Paramedics of North Carolina
Reach Our Children
Special Olympics - Georgia
Special Olympics - Hawaii
Special Olympics - Louisiana
Special Olympics - Maryland
Special Olympics - South Carolina
Special Olympics - Virginia
Special Olympics - Washington
Texas Right to Life
Texas State Troopers Association
The Bible League
The Center for Arizona Policy
The National Association for the Terminally Ill
The National Children's Cancer Society
The Navigators
The Rutherford Institute
Virginia Society for Human Life
West Virginians for Life

Federal Communications Commission
Washington, D.C. 20554

January 26, 1998

Delegate Ronald A. Guns
House of Delegates
161 Lowe Office Building
Annapolis, Maryland 21401-1991

Dear Mr. Guns:

I am writing in response to your August 1, 1997, letter to Regina Keeney, former Chief, Common Carrier Bureau, requesting that the Commission clarify whether the State of Maryland may enact laws that would apply to all commercial telemarketing calls received within the State, only to those calls that originate within the State or only to wholly intrastate calls. You asked whether the Commission had considered adopting rules that would require telemarketers utilizing automated dialing systems to be on the telephone line and ready to respond to call recipients at the time the subscriber answers. Lastly, you asked whether the Commission has considered adopting a rule that would require telemarketers to inform all call recipients that they had the option to be placed on a do-not-call list.

On December 20, 1991, Congress enacted the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243, which amended the Communications Act of 1934[1] by adding a new section 47 U.S.C. § 227. The TCPA mandated that the Commission implement regulations to protect the privacy rights of citizens by restricting the use of the telephone network for unsolicited advertising. On September 17, 1992, the Commission adopted a *Report and Order* (CC Docket 92-90, FCC No. 92-443),[2] which established rules governing unwanted telephone solicitations and regulated the use of automatic telephone dialing systems, prerecorded or artificial voice messages, and telephone facsimile machines.

"Whether a state may impose requirements on interstate communications depends on an analysis under the Supremacy Clause of Article VI of the U.S. Constitution."[3] Under the

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[1] 47 U.S.C. §§ 151 *et seq.* ("Communications Act" or "the Act").

[2] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Report and Order*, 7 FCC Rcd 8752 (1992) (*Report and Order*).

[3] *Operator Services Providers of America Petition for Expedited Declaratory Ruling, Memorandum Opinion and Order*, 6 FCC Rcd 4475, 4476 (1991) (*Operator Services Memorandum Opinion and Order*).

Supremacy Clause, a state may not regulate conduct in an area of interstate commerce intended by the Congress for exclusive federal regulation.[4] "The key inquiry is whether Congress intended to supplant state laws on the same subject."[5] Section 2(a)[6] of the Act grants the Commission jurisdiction over all interstate and foreign communications. Interstate communications are defined as communications or transmissions between points in different states.[7] Section 2(b)(1)[8] of the Act generally reserves to the states jurisdiction over intrastate communications.[9] Intrastate communications are defined as communications or transmissions between points within a state.[10]

The Communications Act, specifically section 227 of the Act, establishes Congress' intent to provide for regulation exclusively by the Commission of the use of the interstate telephone network for unsolicited advertisements by facsimile or by telephone utilizing live solicitation, autodialers, or prerecorded messages. The TCPA also preempts state law where it conflicts with the technical and procedural requirements for identification of senders of telephone facsimile messages or automated artificial or prerecorded voice messages.[11] By its terms, the TCPA shall not "preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits (A) the use of telephone facsimile machines or other electronic devises to send unsolicited advertisements; (B) the use of automatic telephone dialing systems; (C) the use of artificial or prerecorded voice messages; or (D) the making of telephone solicitations."[12]

In light of the provisions described above, Maryland can regulate and restrict intrastate commercial telemarketing calls. The Communications Act, however, precludes Maryland from regulating or restricting interstate commercial telemarketing calls. Therefore, Maryland

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[4] *Id.*

[5] *Id.*

[6] 47 U.S.C. § 152(a).

[7] 47 U.S.C. § 153(22).

[8] 47 U.S.C. § 152(b)(1).

[9] *Operator Services Memorandum Opinion and Order*, 6 FCC Rcd at 4476.

[10] Intrastate means remaining entirely within the boundaries of a single state. NEWTON'S TELECOM DICTIONARY, 11th Edition, at 320. Intrastate telephone calls are calls that originate and are received within the boundaries of a single state.

[11] 47 U.S.C. § 227(d) and e(1); *see Report and Order*, 7 FCC Rcd at 8781.

[12] 47 U.S.C. § 227(e)(1); *see Report and Order*, 7 FCC Rcd at 8781.

can not apply its statutes to calls that are received in Maryland and originate in another state or calls that originate in Maryland and are received in another state.

In response to your second inquiry, the Commission stated that there are separate privacy concerns associated with artificial or prerecorded message solicitations as opposed to live solicitations, which include calls made by autodialers that deliver calls to live operators.[13] The Commission did not consider adopting rules that would require telemarketers utilizing automated dialing systems to be on the telephone line and immediately ready to respond to customers at the time of a call. No provision regarding this concern is reflected in the language of the TCPA. In addition, no comments or petitions suggesting such a requirement were filed before the Commission during the rulemaking proceeding implementing the TCPA. Nothing in our rules, however, would limit the state of Maryland from including this type of provision in its telemarketing statutes applicable to calls between points in the state of Maryland.

In its *Report and Order*, the Commission considered a number of options that proposed to place a variety of requirements upon telemarketers, including requiring telemarketers to inform subscribers of their right to be placed on do-not-call lists. Although the Commission selected the establishment of company-specific do-not-call lists as the most effective alternative to protect residential subscribers from unwanted live solicitations, it did not require telemarketers to notify telephone subscribers of their right to be placed on do-not-call lists.[14] The Commission noted that it would disseminate public notices and work with consumer groups, industry associations, local telephone companies, and state agencies to ensure that consumers are fully informed of their rights under the TCPA. For example, the Commission released a public notice on January 11, 1993, a Consumer Alert in March 1995, and a Consumer News brochure in June 1997, explaining to consumers what actions they can take to reduce the number of unsolicited calls and facsimiles that they receive and detailing consumer rights under the TCPA and the Commission's rules. No additional petitions have been filed requesting that the Commission require telemarketing companies to inform consumers of their right to be placed on the companies' do-not-call lists.

Enclosed is a copy of a Consumer News bulletin addressing consumer rights under the TCPA; a copy of the *Report and Order*, *Memorandum Opinion and Order*,[15] and *Order on Further Reconsideration*[16] published by the Commission implementing the

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[13] *Report and Order*, 7 FCC Rcd at 8756-57.

[14] *Report and Order*, 7 FCC Rcd at 8764-68.

[15] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Memorandum Opinion and Order*, 10 FCC Rcd 12391 (1995) (*Memorandum Opinion and Order*).

[16] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Order on Further Reconsideration*, CC Docket 92-90, FCC 97-117 (rel. Apr. 10, 1997) (*Order on Further Reconsideration*).

TCPA; a copy of 47 C.F.R. § 64.1200, regulations implemented by the Commission regarding the TCPA; and a copy of the TCPA. If you have further questions, please contact Renee Alexander at (202) 418-2497.

Sincerely,

Geraldine A. Matise
Chief, Network Services Division
Common Carrier Bureau